IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9575 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MAHAMMAD IQBAL MAHAMMADHUSAIN SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 9575 of 2002

MR ANIL S DAVE for Petitioner No. 1

MS BANNA S DUTTA for Petitioner No. 1

MR KAMEN N SHUKLA for Petitioner No. 1

MS. NANDINI JOSHI, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 30/04/2003

ORAL JUDGEMENT

Heard learned counsel appearing for the

petitioner Mr. Anil S Dave and learned AGP Ms. Nandini Joshi on behalf of the respondents.

2. In this petition under Article 226 of the Constitution of India, the petitioner-detenu has challenged the legality and validity of the detention order passed by the Police Commissioner, Ahmedabad City dated 11th September, 2002 in exercise of powers vested under him by Sub-Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') branding the petitioner-detenu as dangerous person within the meaning of Section 2(c) of the PASA Act.

2. The petitioner has challenged the legality and validity of the order of detention mainly on the ground that the order passed by the authority suffers from various infirmities and requires to be quashed. It is submitted that the petitioner has wrongly been branded as dangerous person as his activities cannot be said to be in any way prejudicial to maintenance of public order or threat to public tranquility. That though the petitioner was allegedly found involved in only one criminal case, he has been detained mechanically.

3. I have carefully considered the grounds for detention served to the detenu wherein it is apparent that the petitioner as well as many other accused persons were found involved in a criminal offence registered with Shahpur police station vide CR No. 13/2002 and were detained by the authority on the recommendation of the sponsoring machinery. Of course, the authority has placed reliance on some statements recorded of unnamed witnesses but there is some forcible argument of Mr. Dave that on registration of solitary criminal case the petitioner/detenu ought not to have been detained.

4. Mr. Dave has placed reliance on the ratio of the decision of the Apex Court in AIR 2000 SC 3675. Placing reliance on this very decision one of the co-detenu found involved in the very crime, that is, CR No. 13/2002 of Shahpur police station. He was set at liberty by this Court while dealing with Special Civil Application No.8601 of 2002 vide order dated 13th March, 2003 (Coram:P.B.Majmudar,J). Copy of the decision is tendered today for perusal. It is not necessary to reproduce the relevant para 4, 6, and 7 of the decision of the judgement of the Apex Court. The reasons assigned by this Court while dealing with the above said Special Civil Application can be straightway adopted by the Court and I adopt the same. Undisputedly, when the order of

detention was executed, the petitioner was in judicial custody. This aspect has been considered by this Court while dealing with the earlier petition. The very ground is applicable in the present case.

5. It is pertinent to note that similarly situated co-accused and co-detenu have been set at liberty while dealing with eight different Special Civil Applications decided on different dates between 13th March, 2003 and 25th March, 2003. The list of these Special Civil Applications is given today by the learned counsel for the petitioner and the same is taken on record.

6. So, without going into merit and other contentions raised by the petitioner and the facts emerging from the affidavit in reply filed by the respondent I am inclined to allow this petition and the petition is allowed.

7. In the result, this petition is allowed. the impugned order of detention dated 11th September, 2002 passed by the Police Commissioner, Ahmedabad City is hereby quashed and set aside. The petitioner detenu MOHAMMAD IQHAL MOHAMEDHUSAIN SHAIKH is set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS permitted.

(C.K.Buch,J)

Jayanti*